

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Authorizing Permissive Use of the “Next	)	GN Docket No. 16-142
Generation” Broadcast Television Standard	)	
	)	

To: The Commission

**COMMENTS OF SAN BERNARDINO COMMUNITY COLLEGE DISTRICT**

San Bernardino Community College District (“SBCCD” or “District”)<sup>1</sup>, licensee of KVCR-DT, by its attorneys, hereby submits these Comments in response to the Further Notice of Proposed Rulemaking (“*FNPRM*”) in the above-captioned proceeding.<sup>2</sup> In its accompanying Report and Order (“*Report and Order*”), the Commission authorized the deployment of ATSC 3.0 as an optional broadcast television standard.<sup>3</sup> However, it also required Next Gen TV broadcasters (*i.e.*, those broadcasters desiring to utilize ATSC 3.0) “to air a local simulcast of the

---

<sup>1</sup> The San Bernardino Community College District is the licensee of KVCR-DT (“KVCR-DT”), which currently broadcasts on UHF Channel 26 (Virtual Channel 24) and is a Public Broadcasting Service (“PBS”) member station, and KVCR-FM (“KVCR-FM”), an FM station which broadcasts on 91.9 FM and a National Public Radio (“NPR”) member station (collectively, “KVCR”). KVCR-DT is in the process of re-locating to Low VHF Channel 5.

<sup>2</sup> *In the Matter of Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard*, Report and Order and Further Notice of Proposed Rulemaking, GN Docket No. 16-142, FCC 17-158 (rel. November 20, 2017) (“*Report and Order*” and “*FNPRM*”).

<sup>3</sup> The Advanced Television Systems Committee, Inc. (“ATSC”) is an international, non-profit organization developing voluntary standards for digital television. The ATSC member organizations represent the broadcast, broadcast equipment, motion picture, consumer electronics, computer, cable, satellite, and semiconductor industries. ATSC 3.0 is a suite of voluntary technical Standards and Recommended Practices that is fundamentally different from predecessor ATSC systems and is therefore incompatible with them.

primary video programming stream of their ATSC 3.0 channel in ATSC 1.0 format.”<sup>4</sup> It is important to note that these new “local simulcast” rules are intended to be temporary in nature.<sup>5</sup> The Commission also seeks comment on various Next Gen TV migration issues. SBCCD’s comments address the following issues raised in the *FNPRM*: (1) whether non-commercial educational (NCE) stations should be automatically exempt from the local simulcasting requirement; (2) whether NCE stations should receive a presumptive waiver, and if not, what criteria the Commission should consider when determining whether a NCE station should receive a waiver from the local simulcasting requirement; and (3) whether the Commission should allow Next Gen TV stations to utilize “vacant in-band television channels remaining in the market after the incentive auction repack to serve as temporary host facilities for ATSC 1.0 or 3.0 programming by multiple broadcasters.”<sup>6</sup>

**I. THE COMMISSION SHOULD GRANT SIMULCAST EXEMPTIONS TO NCE STATIONS AND ALLOW THEM TO PROCEED DIRECTLY TO ATSC 3.0.**

The new local simulcast requirement imposes an undue cost on NCE television stations, and these costs have a greater impact on NCE television stations than they do on commercial television broadcasters. Additionally, the cost savings afforded to NCE television stations like KVCR-DT<sup>7</sup> in the event of a class-wide exemption would lead to greater public interest benefits than those perceived to be afforded under the current local simulcast standard.

---

<sup>4</sup> *Report and Order* at ¶ 11.

<sup>5</sup> *Id.* at ¶ 14.

<sup>6</sup> *FNPRM*. at ¶ 126.

<sup>7</sup> KVCR broadcasts the following four sub-channels: (1) 24.1, KVCR HDTV; (2) 24.2, KVCR First Nations Experience (FNX); (3) 24.3, KVCR-DT3 Desert Cities; and (4) 24.4, KVCR Create.

Granting an exemption from the local simulcast requirement to all NCE stations would remove the economic burden of broadcasting two signals – one utilizing ATSC 1.0 and one utilizing ATSC 3.0. The cost of simulcasting is substantial, particularly for NCE stations that cannot rely on the revenues generated by commercial advertising.

In its *Report and Order* the Commission stated that one rationale for the mandate is to minimize or eliminate the burden placed on the over-the-air viewing public of purchasing either new television sets or ATSC 3.0 converters.<sup>8</sup> However, public television stations like KVCR-DT have zero incentive to lose viewers during a move to Next Gen TV. As was pointed out by PBS in a recent *ex parte* filing, “[p]ublic television stations will ensure the continuity of viewer access throughout the transition *regardless* of whether the Commission imposes a regulatory mandate.”<sup>9</sup> For example, one way KVCR-DT will ensure continuity is by delaying the actual migration to Next Gen TV until there are enough televisions and converters seeded into the marketplace. The country’s 361 public television stations, KVCR-DT-included, have a duty to act in their community’s best interest and a natural incentive to both retain viewers and prevent the alienation of community support. KVCR-DT, in particular, is the oldest PBS station in Southern California and it has acted in the best interests of the viewers of the Inland Empire since its start in 1962. Given the undue burdens a local simulcast requirement imposes on NCE broadcasters and the ability of such broadcasters to customize their Next Gen TV migration plans without harming local viewers, a blanket exemption for NCE broadcasters is in the public interest.

**II. ABSENT A BLANKET EXEMPTION FOR NCE BROADCASTERS, THE COMMISSION SHOULD ADOPT A PRESUMPTIVE AND STREAMLINED WAIVER POLICY FOR NCE STATIONS MIGRATING TO ATSC 3.0.**

---

<sup>8</sup> *Report and Order* at ¶ 16.

<sup>9</sup> *Ex Parte* of the Public Broadcasting Service (PBS), GN Docket Nos. 16-42 and 16-142 (filed December 13, 2017).

The Commission's *Report and Order* determined that waivers of the local simulcast requirement would be granted on a "case-by-case basis."<sup>10</sup> Additionally, the Commission stated that it was "inclined to consider favorably requests for waiver...where the Next Gen TV station can demonstrate that it has no viable local simulcasting partner."<sup>11</sup> A key question that needs to be answered is what type of television stations are considered as "viable" local simulcasting partners in the eyes of the FCC? Just because there are other full power broadcasters in the same DMA migrating to ATSC 3.0 does not mean that every station has a viable partner. A whole gamut of technical, practical or operational roadblocks, not the least of which is an unwillingness to negotiate by one party with another party, can make a seemingly viable partner unviable. The mere existence of a *potential* local simulcasting partner is not enough to presume viability, nor is the fact that a potential station covers at least 95 percent of the requesting station's population. The *FNPRM* asks that commenters provide input as to whether there exist "special circumstances" applicable to "NCE stations, including those that are in isolated areas or are not centrally located in DMAs."<sup>12</sup> As discussed below, where such circumstances exist, the Commission should make clear that a waiver is warranted.

SBCCD believes that the issue of viability, and by extension, the conditions necessary for when a presumptive waiver are warranted, are interrelated. True viability requires an arms-length commercial agreement, broadcasting coverage contours that are demonstrably similar in size and location, and no greater than a five percent loss in coverage to the community of service. This is

---

<sup>10</sup> *FNPRM* at ¶ 122.

<sup>11</sup> *Id.*

<sup>12</sup> *FNPRM* at ¶ 123. When it comes to waiver requests for Next Gen TV broadcasters who wish to simulcast from a facility that will not cover their community of license, the Commission also asks whether a determining factor should be "how far the host location is from the community of license."

the foundation for a presumptive waiver policy. SBCCD believes that, at a minimum, if local simulcasting is materially hindered due to: (1) the inability of a station to locate a viable local simulcast partner; or (2) the lack of a meaningful geographic overlap between willing stations (*i.e.*, the coverage contours must not differ by more than X%) despite those stations sharing a DMA and having less than a five percent difference in covered population, then the Commission should grant a presumptive waiver. The Commission should make clear that a station that meets these two criteria is presumptively entitled to a waiver of the local simulcast requirement.

KVCR-DT's special circumstances explain why the Commission should adopt the presumptive waiver criteria set forth above. In KVCR's case, not only will willing simulcast partners be difficult to come by when it comes to negotiations, those potential simulcast partners are not otherwise "viable" due to disparate geography. KVCR-DT is licensed to operate in not just one of the most highly populated DMAs in the United States (Los Angeles), but also one of the largest in terms of size. Indeed, KVCR-DT's transmission facility and broadcasting tower on Box Springs Mountain just south of San Bernardino is nearly 50 miles from Mount Wilson which is the location where the vast majority of full power stations serving Greater Los Angeles are located. The Commission's rules require that a Next Gen TV broadcaster's 1.0 simulcast channel continue to serve its entire community of license.<sup>13</sup> But despite the covered *population* loss potentially being within the 5 percent permitted, the actual community of service served by those stations with facilities north of Los Angeles - - is remarkably different than that currently served by KVCR-DT.

KVCR-DT's transmitting tower is not just separated by substantial distance from other Los Angeles DMA television broadcast towers, but it is also geographically isolated from the

city and suburbs of Los Angeles by the Chino Hills, which run in a SE direction from Los Angeles County down to San Diego County and reach a height of 485 meters (or 1,591 feet). KVCR-DT's broadcast facilities are primarily intended to serve the residents east of the Chino Hills, especially in San Bernardino County, Riverside County, Tribal lands, and other locations in California's Inland Empire and desert counties. Meanwhile, the bulk of the full broadcast television stations that are located on Mount Wilson – which KVCR-DT would need to rely on for local simulcasting -- serve Los Angeles and its bedroom communities.

Put simply, KVCR-DT is too geographically isolated from the bulk of Next Gen TV broadcasters in the Los Angeles DMA who might be willing to provide local simulcast capabilities; and even if there were a willing partner in the Los Angeles DMA, the community of license and population that partner will actually serve (while maintaining greater than a 5% loss of covered population) is in fact completely different from that covered by KVCR.<sup>14</sup> If KVCR-DT's ATSC 3.0 transmission was to be broadcast from a Next Gen TV station located on Mount Wilson in Los Angeles County, then the benefits to over-the-air subscribers would be directed to those residing mostly west of San Bernardino and Riverside Counties. Likewise, if KVCR-DT were to migrate its Box Springs Mountain facilities in Riverside County to ATSC 3.0 and use a Mt. Wilson station to provide its required ATSC 1.0 "local" simulcast option, the extent to which viewers east of the Chino Hills could receive this over-the-air transmission will hinge in large part on the host station's exact tower location, RF channel frequency, licensed transmitter power, and even the weather. The closest full-power station to KVCR-DT, regardless of DMA, is over

---

<sup>14</sup> The attached map depicts the service contours of KVCR-DT in relation to other full power broadcasters in the Los Angeles DMA.

44 kilometers away from KVCR-DT's operations on Box Springs Mountain.<sup>15</sup> If KVCR-DT remains obligated to provide a local simulcast of its primary transmission channel using ATSC 1.0, and those potential options must be located in the Los Angeles DMA, then KVCR-DT will be forced to find a partner over 78 kilometers away and across a mountain range. The District and KVCR do not believe that this would be in the public interest, nor in the best interest of KVCR-DT's current over-the-air viewers.

As discussed above, the Commission should allow a blanket exemption for NCE broadcasters from the local simulcast requirement. However, if no blanket exemption is available for NCEs, then the Commission should establish a presumptive waiver policy – especially for NCEs – creating a waiver safe harbor when conditions such as distance and topography or other similar circumstances make a local simulcast partner neither practical nor viable. At a minimum, the Commission should make clear which circumstances will warrant a presumptive waiver. Greater certainty regarding the Commission's waiver policy in these circumstances is likely to reduce the significant expense of preparing and prosecuting a request for waiver of the local simulcast requirement.

### **III. THE COMMISSION SHOULD ALLOW THE TEMPORARY USE OF IN-BAND VACANT CHANNELS IN ORDER FOR STATIONS TO PROVIDE A LOCAL SIMULCASTING OPTION IN THE TRANSITION FROM ATSC 1.0 TO 3.0.**

Existing vacant channels in the UHF, High VHF and Low VHF bands represent a tremendous “lifeboat” for full-power stations intending to migrate to ATSC 3.0 but which, for the reasons discussed above, are unable to provide a local simulcast of primary channels using ATSC 1.0 in their respective communities of license. To comply with the local simulcast requirement without the ability to utilize a vacant channel elsewhere in the Low VHF, High VHF

---

<sup>15</sup> KVMD is located in Twentynine Palms, CA.

or UHF bands, KVCR-DT would be forced to find a “viable” local simulcast partner elsewhere in the Los Angeles DMA, which as was explained above, is difficult if not impossible. KVCR-DT agrees with other parties in this proceeding that once a channel becomes vacant as a result of the post-incentive auction transition, full power licensees should have priority over LPTV stations, translators and new television applicants in utilizing those channels - - in the short-term -- for the purpose of providing a local simulcast with an ATSC 1.0 signal.

There are many reasons for allowing the use of vacant in-band channels and prioritizing full power stations before other potential licensees. First, the Commission has clearly stated that it intends for the local simulcast period to be of limited duration.<sup>16</sup> This means that in a relatively short period of time the vacant channels acting as “lifeboats” can be re-purposed for LPTV, translators and new applicants. For those full power stations obligated to provide a local simulcast using ATSC 1.0, the public interest benefits of using vacant channels outweigh any public interest harms in temporarily delaying those same channels from being used by LPTVs, translators and new applicants. Second, allowing the use of vacant in-band channels will allow stations to take advantage of efficiencies related to the post-incentive auction transition period. During this period, there will be many legacy facilities (*e.g.*, towers, transmitters and antennas) that are at the beginning or the end of their lifecycles. This extra capacity could be used to broadcast over the vacant channels in order to help ease the burden of finding ATSC 1.0 facilities to provide a local simulcast of the ATSC 3.0 transmissions. So long as the local simulcast requirement is mandated and the Commission wants to encourage innovation and expanded services, it should maximize the flexibility offered by vacant channels before they are re-offered during any LPTV displacement window.

---

<sup>16</sup> *Report and Order* at ¶ 14.



As discussed above, NCEs should be exempted from the local simulcast requirement, or at the very least, able to take advantage of a presumptive waiver process when a viable local simulcast partner is unavailable. However, if a full power station is required to provide a local simulcast signal for ATSC 1.0, the Commission should make every effort to open up vacant channels to ease the burden of migration. Additionally, stations seeking to broadcast a local simulcast ATSC 1.0 signal should not be limited to frequencies in their current frequency band. In other words, vacant channels should be made available on an equal opportunity basis to all full power stations during any local simulcast period, regardless if that vacant channel is in the Low VHF Band, High VHF Band, or UHF Band.

#### **IV. CONCLUSION**

The Commission recognizes the potential of Next Gen TV, a technology that “merges the capabilities of over-the-air (OTA) broadcasting with the broadband viewing and information delivery methods of the Internet.”<sup>17</sup> However, the local simulcast requirement adds a tremendous burden to NCE stations, particularly those like KVCR-DT which are already burdened with migrating in the post-incentive auction repacking process. Public television stations are already inclined to do what is best for their viewers and community of interest. Indeed, KVCR-DT’s mission station obligates it to be the informational center of the Inland Empire, and any loss of coverage or diminished viewership is counter-productive to retaining the public trust. KVCR-DT will always keep in mind the public trust when planning the best means of migrating to ATSC 3.0. Accordingly, NCEs should be granted an exemption from the Commission’s Next Gen TV local simulcasting requirement. In the event no exemption is

---

<sup>17</sup> *Id.* at ¶ 1. Once deployed, ATSC 3.0 will not just allow broadcasters “to innovate, improve service, and use their spectrum more efficiently,” it “will allow broadcasters to offer enhanced public safety capabilities, such as geo-targeting of emergency alerts” and “waking up sleeping devices to warn consumers of imminent emergencies.”

granted, the Commission should grant NCEs presumptive waivers when those conditions described above exist, or at the very least, clarify the circumstances under which waivers will be granted. Finally, if the local simulcast requirement is retained for NCEs, then vacant channels in the Low VHF, High VHF and UHF Bands should be opened up to full power stations on a prioritized, but temporary, basis until the local simulcast requirement is lifted.

Respectfully submitted,

**SAN BERNARDINO COMMUNITY COLLEGE  
DISTRICT**

By: */s/ Michael R. Bennet*

---

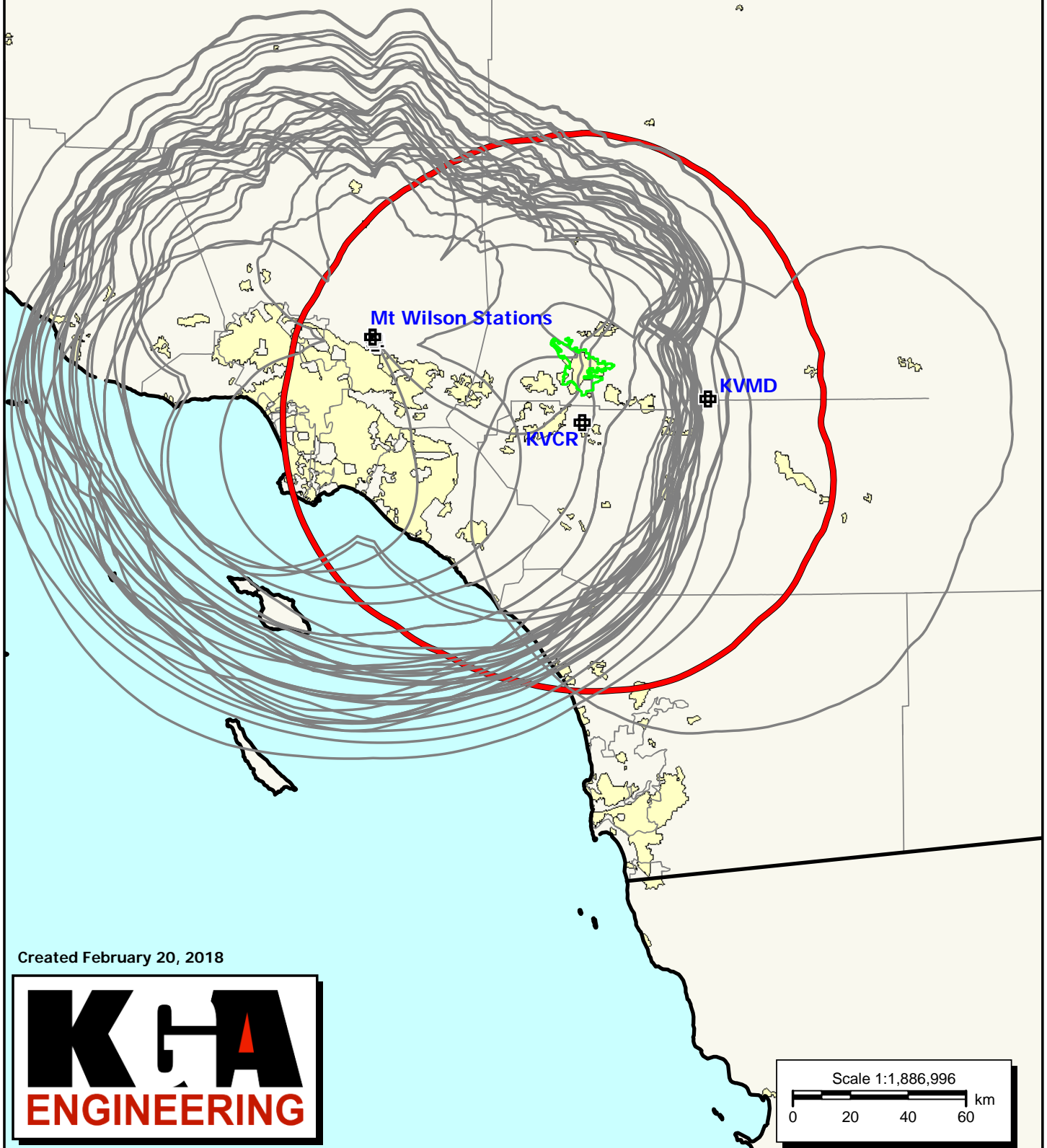
Michael R. Bennet  
Daryl A. Zakov  
Womble Bond Dickinson (US) LLP  
1200 19<sup>th</sup> Street NW  
Suite 500  
Washington, DC 20036  
(202) 857-4442  
Its Attorneys

February 20, 2018

# KVCR-DT Coverage Contour vs. Other Los Angeles DMA Stations

## Legend

- Other Stations – City Grade Contours
- KVCR - City Grade Contour
- KVCR Community of License - San Bernardino



Created February 20, 2018

**K&A**  
**ENGINEERING**

Scale 1:1,886,996

0 20 40 60 km